

Mar 27, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TIMOTHY SADLIER,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

No. 4:17-CV-05115-EFS

**ORDER GRANTING SUMMARY JUDGMENT
IN FAVOR OF DEFENDANT**

Before the Court, without oral argument, are cross-summary-judgment motions. ECF Nos. 13 & 17.¹ Plaintiff Timothy Sadlier appeals the Administrative Law Judge's (ALJ) denial of benefits. See ECF Nos. 1 & 13.² The Commissioner of Social Security (Commissioner), as the Defendant, asks the Court to affirm the ALJ's determination that Mr. Sadlier is not disabled and is capable of performing substantial gainful activity in a field for which a significant number of jobs exist in the national economy. See ECF Nos. 8 & 17. After reviewing the record and relevant authority, the Court is fully informed. For the reasons set forth below, the Court denies Mr. Sadlier's Motion for Summary Judgment and grants the Commissioner's Motion for Summary Judgment.

¹ For the sake of consistency, all citations to electronically filed documents refer to the page number as it appears in PDF format.

² Mr. Sadlier's motion for summary judgment was initially filed as ECF No. 12, but he then filed a praecipe, ECF No. 13.

1 **I. Standard of Review**

2 The Court must uphold an ALJ's determination that a claimant is
3 not disabled if the ALJ applied the proper legal standards and there
4 is substantial evidence in the record as a whole to support the
5 decision. *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)
6 (citing 42 U.S.C. § 405(g)). As such, unless such error was harmless,
7 the Court will reverse an ALJ's decision if he applied the incorrect
8 legal standard in weighing the evidence and arriving at his decision.
9 See *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Likewise,
10 the Court will reverse an ALJ's decision that is not supported by
11 substantial evidence. Notably, substantial evidence is "more than a
12 mere scintilla, but less than a preponderance. It means such relevant
13 evidence as a reasonable mind might accept as adequate to support a
14 conclusion." *Desrosiers v. Sec'y of Health & Human Servs.*, 846 F.2d
15 573, 576 (9th Cir. 1988) (citations and internal quotation marks
16 omitted).

17 In reviewing a denial of benefits, the Court considers the
18 record as a whole, not just the evidence supporting the ALJ's
19 decision. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989). That
20 said, the Court may not substitute its judgment for the
21 Commissioner's. If the evidence supports more than one rational
22 interpretation, the Court must uphold the ALJ's decision. *Allen v.*
23 *Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). The Court will also
24 uphold "such inferences and conclusions as the [ALJ] may reasonably
25 draw from the evidence." *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th
26 Cir. 1965).

1 II. Five-Step Disability Determination

2 The ALJ uses a five-step sequential evaluation process to
3 determine whether an adult claimant is disabled. See 20 C.F.R.
4 §§ 404.1520, 416.920. The burden of proof shifts during this
5 process. The claimant has the initial burden of establishing
6 entitlement to disability benefits under steps one through four. At
7 step five, however, the burden shifts to the ALJ to show that the
8 claimant is not entitled to benefits. See *Rhinehart v. Finch*, 438
9 F.2d 920, 921 (9th Cir. 1971).

10 At step one, the ALJ determines whether the claimant is
11 currently engaged in a substantial gainful activity. *Id.*
12 § 416.920(a)(4)(i). If he is, benefits are denied. 20 C.F.R.
13 §§ 404.1520(b), 416.920(b). If he is not, the ALJ proceeds to the
14 second step.

15 At step two, the ALJ assesses whether the claimant has a
16 medically severe impairment, or combination of impairments, which
17 significantly limit the claimant's physical or mental ability to do
18 basic work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c). If he
19 does not, the disability claim is denied. If he does, the evaluation
20 proceeds to the third step.

21 At step three, the ALJ compares the claimant's impairment to
22 several recognized by the Commissioner to be so severe as to preclude
23 substantial gainful activity. 20 C.F.R. §§ 404.1520(d), 404 Subpt. P
24 App. 1, 416.920(d). If the impairment meets or equals one of the
25 listed impairments, the claimant is conclusively presumed to be
26

1 disabled. If the impairment does not, the evaluation proceeds to the
2 fourth step.

3 At step four, the ALJ assesses whether the impairment prevents
4 the claimant from performing work he has performed in the past by
5 determining the claimant's residual functional capacity (RFC). 20
6 C.F.R. §§ 404.1520(e), 416.920(e). If the claimant is able to
7 perform his previous work, the claimant is not disabled. If the
8 claimant cannot perform this work, the evaluation proceeds to the
9 fifth step.

10 At the fifth and final step, the ALJ determines whether the
11 claimant can perform other work in the national economy in light of
12 his age, education, and work experience. 20 C.F.R. §§ 404.1520(f),
13 416.920(f); see *Bowen v. Yuckert*, 482 U.S. 137 (1987). The
14 Commissioner has the burden to show (1) that the claimant can perform
15 other substantial gainful activity, and (2) that a "significant
16 number of jobs exist in the national economy" which the claimant can
17 perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984). If
18 both these conditions are met, the claim is denied; if not, it is
19 granted.

20 **III. Facts, Procedural History, and the ALJ's Findings**³

21 Plaintiff Timothy Sadlier was born on July 17, 1982. See
22 Administrative Record, ECF No. 9, (AR) 98. He states that as a child,
23 he was diagnosed with Attention Deficit Hyperactivity Disorder and
24 Bipolar disorder. See AR 346. Throughout the years, Mr. Sadlier has

25
26 ³ The facts are only briefly summarized. Detailed facts are contained in the
administrative hearing transcript, the ALJ's decision, and the parties'
briefs.

1 been diagnosed with several mental disorders, including anxiety,
2 bipolar disorder (rapid-cycling), polysubstance abuse (including
3 methamphetamine, marijuana, and alcohol), and antisocial personality
4 disorder. AR 119, 312-14, 328, 344.

5 Mr. Sadlier is 5'9" tall and weighs approximately 240 pounds.
6 See AR 99. Mr. Sadlier lives with his parents in Kennewick,
7 Washington. AR 44, 184. He reports that, on an average day, he spends
8 his time watching television, listening to the stereo, smoking
9 marijuana, playing video games, going on Facebook, "going out" with
10 his brother, and then smoking more marijuana. AR 70-71. He has no
11 significant work history. See AR 245.

12 On November 6, 2013, Mr. Sadlier filed a claim for Supplemental
13 Security Income (SSI) Disability, alleging an onset date of January 1,
14 2012. AR 100, 183. A disability examiner determined that Mr. Sadlier
15 was not disabled and denied him benefits on February 19, 2014. AR 125.
16 On March 18, 2014, Mr. Sadlier's claim was also denied upon
17 reconsideration. AR 132. Mr. Sadlier requested a hearing before an
18 ALJ, AR 138, and that hearing occurred on October 27, 2015, in
19 Seattle, Washington before ALJ Wayne N. Araki. AR 40. Mr. Sadlier was
20 represented by Shane B. Smith. AR 40. During the hearing, Mr. Sadlier
21 gave testimony, as did vocational expert Mark A. Harrington. AR 40.

22 On November 30, 2015, the ALJ issued a decision finding
23 Mr. Sadlier not disabled for purposes of the Social Security Act.
24 AR 20. At step one, the ALJ concluded that Mr. Sadlier had not
25 engaged in substantial gainful activity since his application date.
26 AR 25. At step two, the ALJ found that Mr. Sadlier has the following

1 severe impairments: affective disorder/bipolar, anxiety disorder,
2 personality disorder, and substance addiction disorder. AR 25. And,
3 at step three, the ALJ determined that these limitations do not meet
4 or medically equal the severity of any listed impairment. AR 26.

5 At step four, the ALJ found that – despite his impairments –
6 Mr. Sadlier has the RFC to perform “a full range of work at all
7 exertional levels,” so long as such work includes the following
8 nonexertional limitations:

9 Infrequent superficial interaction with the general public;
10 once job duties are learned, he can perform occupations
11 with an SVP level of 1-2, with interactions with
12 supervisors consistent with these occupations; occasional
13 superficial interaction with coworkers; job duties do not
14 require the assistance of others for completion; job duties
do not require work in a team setting; he is able to adjust
to changes in the work setting generally associated with
occupations with an SVP of 1-2; job duties do not require
independent planning and/or goal setting.

AR 27.

15 At step five, the ALJ noted that the primary issue was whether
16 Mr. Sadlier’s limitations relating to his personality disorder
17 prevented him from behaving in a manner suitable to a workplace
18 environment. AR 29. The ALJ further noted that, contrary to
19 Mr. Sadlier’s self-reporting, the documentary evidence shows he can
20 interact with others and be around people without incident, if doing
21 so serves his own interests. AR 29. The ALJ therefore concluded that
22 Mr. Sadlier “does have the capacity to modify his behavior. He
23 clearly knows that his behavior is right or wrong, and has made
24 choices based on the consequences.” AR 29.

25 Then – based on the testimony of the vocational expert in
26 consideration of Mr. Sadlier’s age, education, work experience, and

1 residual functional capacity – the ALJ found that even with his
2 nonexertional limitations, Mr. Sadlier is capable of performing the
3 requirements of the following representative occupations:

4 landscape laborer, Dictionary of Occupational Titles code
5 408.687-014 (100,000 jobs nationally); construction worker
6 II, 869.687-026 (150,000 jobs nationally); janitor,
7 381.687-018 (100,000 jobs nationally); packager, 920.587-
8 018 (50,000 jobs nationally); assembler, small
9 products, 706.684-022 (25,000 jobs nationally); and bottle
10 packager, 920.685- 026 (30,000 jobs nationally). The
11 representative occupations are light and unskilled, with an
12 SVP level of 2, and range from light to very heavy in
13 exertion.

14 AR 33.

15 As such, the ALJ denied Mr. Sadlier's claim at step five,
16 finding that Mr. Sadlier is "capable of making a successful adjustment
17 to other work that exists in the national economy." AR 33.

18 The Appeals Council denied Mr. Sadlier's request for review,
19 AR 1, making the ALJ's decision the final agency action for purposes
20 of judicial review. See 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481,
21 422.210. Mr. Sadlier filed this lawsuit on August 3, 2017, appealing
22 the ALJ's decision. ECF No. 1. The parties then filed the present
23 summary-judgment motions. ECF Nos. 13 & 17.

24 **IV. Arguments & Analysis**

25 In asking for the ALJ's decision to be reversed, Mr. Sadlier
26 argues that the ALJ erred in three ways: (A) giving little weight to
Dr. Wert's opinion that Mr. Sadlier is unable to work; (B) rejecting
limitations reported by Mr. Sadlier's mother; and (C) rejecting
Mr. Sadlier's claims regarding the severity of his functional
limitations. The Court addresses each challenge to the ALJ's decision
in turn.

1 **A. Dr. Wert's Opinion**

2 Examining psychologist Paul M. Wert, Ph.D. recommended that
3 Mr. Sadlier pursue SSI Disability. In his report, Dr. Wert stated
4 that Mr. Sadlier "does not present with the emotional, affective, and
5 behavioral stability necessary to become gainfully employed. [Mr.
6 Sadlier] does not present as being capable of managing the stressors
7 and pressures of either job training or actual employment." AR 501.
8 The ALJ, however, gave this opinion little weight, providing the
9 following explanation:

10 [Dr. Wert's] opinion is inconsistent with the claimant's
11 mental status findings and with the record as a whole.
12 Dr. Wert observed that his motor activity was unremarkable,
13 his attention and concentration were within normal limits,
14 and he was oriented. The claimant's immediate and recent
15 memory were within normal limits, although his remote
16 memory was somewhat impaired. His flow of speech was
17 normal. He was somewhat guarded and irritable, his affect
18 was restricted and his thought content suggested
19 suspicions. However, the claimant's organization of
20 thought was logical and goal-directed, with no indications
21 of circumstantiality, tangentiality, or loosening of
22 associations. He denied indications of perceptual
23 disturbances, such as auditory or visual hallucinations
24 AR 31.

25 Mr. Sadlier argues that the ALJ improperly "cherry-pick[ed] the
26 relatively benign mental status exam from the totality of Dr. Wert's
assessment." ECF No. 13 at 10. According to Mr. Sadlier, the ALJ also
erred by "failing to explain which part of Dr. Wert's opinion was
inconsistent with the record and why." ECF No. 13 at 11.

23 **1. Legal Standard**

24 "In disability benefits cases, physicians may render medical,
25 clinical opinions, or they may render opinions on the ultimate issue
26 of disability – the claimant's ability to perform work." *Garrison v.*

Colvin, 759 F.3d 995, 1012 (9th Cir. 2014) (quotation marks omitted). The ALJ must provide "clear and convincing" reasons for rejecting the uncontradicted opinion of an examining physician. *Id.* To reject an examining physician's opinion that is contradicted by another doctor, however, the ALJ need only provide "specific and legitimate reasons" that are supported by "substantial evidence" in the record. *Id.* "An ALJ can satisfy the substantial evidence requirement by setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings." *Garrison*, 759 F.3d at 1012 (internal quotation marks omitted).

2. Analysis & Conclusion

The ALJ did not "cherry pick" from Dr. Wert's report. The ALJ directly addressed, and rejected, Dr. Wert's opinion that Mr. Sadlier is not employable. In doing so, the ALJ noted incongruities within Dr. Wert's report and that the bulk of the record contradicted Dr. Wert's opinion. For instance, the ALJ pointed out that Dr. Wert's August 2012 opinion was at odds with a newer medical report that was authored by State agency psychological consultant Diane Fligstein, PhD. AR 31, 123 ("[Mr. Sadlier] could keep to a schedule and maintain regular attendance and complete a normal workweek without special accommodation."). Likewise, Dr. Wert's report was largely inconsistent with Mr. Sadlier's prison medical records and the notes authored by Mr. Sadlier's various mental-health treatment providers. See, e.g., AR 330-40, 405-59.⁴

⁴ For example, after conducting a mental-health assessment in December 2013, the treatment provider noted that Mr. Sadlier "showed good eye contact, was polite, cooperative and seemed engaged in the evaluation process," and that

1 Contrary to Mr. Sadlier's suggestion otherwise, the ALJ was not
2 required to counter Dr. Wert's opinion on a point-by-point basis. See
3 *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003)
4 (holding that an ALJ need not discuss "every piece of evidence" in
5 order to demonstrate that the ALJ did not "selectively analyze" the
6 evidence). By setting forth and discussing the ample evidence that
7 contradicted Dr. Wert's opinion, the ALJ provided specific and
8 legitimate reasons, supported by substantial evidence, for rejecting
9 that opinion. See *Lester v. Chater*, 81 F.3d 821, 831 (9th Cir. 1996)
10 (noting that the ALJ was justified in rejecting an examining
11 psychologist's opinion where it conflicted with "the overwhelming
12 weight of the other evidence of record"); see also 20 C.F.R.
13 § 416.927(c)(3) (weight assigned to medical source can depend on
14 evidentiary support and the explanation provided). The Court
15 therefore holds that the ALJ did not err by assigning little weight to
16 Dr. Wert's opinion.

17 **B. Report by Mr. Sadlier's Mother**

18 Mr. Sadlier's mother submitted a functional report in support of
19 his application for SSI Disability. AR 267. In describing how
20 Mr. Sadlier's conditions limit his ability to work, his mother said
21 that "his obsessive compulsive disorder is very prominent, he cannot
22 change tasks easily, he has a hard time understanding normal
23 directions, [and he has] antisocial behaviors." AR 267. The ALJ gave
24 partial weight to this report, explaining as follows:

25 "Mr. Sadlier believed some of his strengths include having creative ideas,
26 being innovative and being a hard worker. He said he enjoyed meeting new
people [and] traveling" AR 407-08.

1 The claimant does not have a medically determinable
2 impairment of obsessive compulsive disorder. Contrary to
3 her reports that he is argumentative and combative, his
4 behavior in the medical records has been appropriate. In
5 addition, the Social Security employee who interviewed the
6 claimant when he filed his application did not observe any
7 difficulties. The claimant, who came in with his mother,
8 seemed in good spirits.

9 AR 31.

10 Mr. Sadlier argues that his mother never alleged that he could
11 not be agreeable, "so this is not a valid reason to discredit the
12 statement that frequently he is disagreeable to the point of not being
13 able to maintain competitive employment." ECF No. 13 at 15.

14 **1. Legal Standard**

15 Evidence from a layperson relating to a claimant's symptoms
16 "cannot be disregarded without comment." *Nguyen v. Chater*, 100 F.3d
17 1462, 1467 (9th Cir. 1996) (citations omitted). If the ALJ intends to
18 discount the testimony of any lay witnesses, he "must give reasons
19 that are germane to each witness." *Stout v. Comm'r, Soc. Sec. Admin.*,
20 454 F.3d 1050, 1053 (9th Cir. 2006) (quoting *Dodrill v. Shalala*, 12
21 F.3d 915, 919 (9th Cir. 1993)).

22 **2. Analysis & Conclusion**

23 The ALJ properly noted that the record does not indicate
24 Mr. Sadlier suffers from obsessive compulsive disorder, let alone that
25 such a condition manifests in a way that is "very prominent" so as to
26 interfere with potential employment. Further, the ALJ correctly
observed that the treatment records – as a whole – show that when he
wants to, Mr. Sadlier is consistently capable of interacting with
others in a reasonable, polite manner. These reasons are sufficiently
germane to reject portions of his mother's report. The Court holds

1 that the ALJ did not commit reversible error by assigning limited
2 weight to the report submitted by Mr. Sadlier's mother.

3 **C. Mr. Sadlier's Claims Regarding Functional Limitations**

4 In applying for SSI Disability, Mr. Sadlier's primary argument
5 was that his personality disorders rendered him incapable of
6 maintaining employment. The ALJ found that Mr. Sadlier's medically
7 determinable impairments could reasonably be expected to cause some of
8 the alleged symptoms, but that Mr. Sadlier's statements "concerning
9 the intensity, persistence and limiting effects of these symptoms"
10 were not entirely credible, stating as follows:

11 The question is whether or not the claimant is able to
12 modify his behavior to adjust to be able to work. After
13 reviewing the evidence and taking the claimant's testimony,
14 I believe that he does have the capacity to modify his
15 behavior. He clearly knows that his behavior is right or
16 wrong, and has made choices based on the consequences.
17 When asked if he would have made a different decision
18 knowing now what happened, his answer was yes. He
19 acknowledged that he understood he was breaking the law,
20 but wanted to do so and did not care. He did testify that
21 he did not know some of the things that got him in trouble
22 were a violation of certain rules.

23
24 His history of crimes of dishonesty is relevant in weighing
25 the credibility of the claimant's allegations, particularly
26 in combination with other factors.

AR 29-30.

20 **1. Mr. Sadlier's Symptom-Severity Testimony**

21 Mr. Sadlier argues that even if he is capable of distinguishing
22 right from wrong, this "is not clear and convincing evidence that his
23 behavior is entirely volitional or that his personality disorder does
24 not prevent him from disregarding these norms." ECF No. 13 at 17.
25 Mr. Sadlier suggests that although his criminal history "may suggest
26 that he has a propensity to be dishonest, failure to conform to the

1 law is part and parcel of [his] impairment and supports, rather than
2 detracts from, his claim of a severe personality disorder." ECF No. 13
3 at 19.

4 a. Legal Standard

5 The Court of Appeals for the Ninth Circuit has explained that
6 "credibility determinations are the province of the ALJ." *Fair v.*
7 *Bowen*, 885 F.2d 597, 604 (9th Cir. 1989). Nonetheless, in the Ninth
8 Circuit, if a claimant's impairment could reasonably be expected to
9 produce the symptoms alleged in the testimony, and there is no
10 evidence that the claimant is malingering, an ALJ may reject the
11 claimant's testimony about the severity of his symptoms only upon
12 providing "specific, clear, and convincing reasons." *Smolen v. Chater*,
13 80 F.3d 1273, 1281 (9th Cir. 1996). General findings are
14 insufficient; the ALJ "must state which . . . testimony is not
15 credible and what evidence suggests the complaints are not credible."
16 *Dodrill*, 12 F.3d at 918. Examples of legitimate bases to discredit a
17 claimant's testimony include his "reputation for truthfulness,
18 inconsistencies in testimony or between testimony and conduct," as
19 well as other "ordinary techniques of credibility evaluation." *Orn v.*
20 *Astrue*, 495 F.3d 625, 636 (9th Cir. 2007); *Fair*, 885 F.2d at 604 n.5.

21 b. Analysis & Conclusion

22 The ALJ discussed at length several specific instances in which
23 the record contradicted Mr. Sadlier's statements regarding the
24 severity of his symptoms. For instance, the ALJ cited to Bureau-of-
25 Prisons treatment records that indicated Mr. Sadlier suffered from
26 neither "significant psychological distress" nor any "significant

1 mental health problems," AR 431. The ALJ also cited Mr. Sadlier's
2 mental-health evaluation and treatment records, which show he often
3 engaged in activities inconsistent with disabling social limitations.
4 AR 30; see also, e.g., AR 332. Indeed, as noted by the ALJ, the record
5 overwhelmingly demonstrates that Mr. Sadlier is capable of following
6 rules when he believes doing so is in his own interest, and that he
7 has at least some ability to be around other people. AR 29. Thus, the
8 ALJ reasonably stated, "I do not believe that [Mr. Sadlier] cannot
9 control his behavior. Rather it is more that he feels that he should
10 not have to comply with societal norms if he does not want to but at
11 the same time he feels that society should support him in his
12 choices." AR 30.

13 Mr. Sadlier misses the mark by arguing that his criminal history
14 is consistent with, or indicative of, a severe personality disorder.
15 Regardless of whether a personality disorder explains or somehow
16 contributed to his criminal acts, Mr. Sadlier's crimes reflect a
17 history of dishonesty and a willingness to engage in deceit and
18 manipulation when he believes it to be in his best interest.⁵ The ALJ
19 was therefore justified in using Mr. Sadlier's criminal history as a
20 basis for rejecting his symptom-severity testimony. See *Hardisty*
21 *v. Astrue*, 592 F.3d 1072, 1080 (9th Cir. 2010) (affirming credibility
22 determination based in part on claimant's criminal history); *Simmons*
23 *v. Massanari*, 264 F.3d 751, 756 (8th Cir. 2001) (same).

24 ⁵ Mr. Sadlier admitted to committing crimes including, but not limited to,
25 theft, forgery, check fraud, larceny, trespassing, and failure to register
26 as a sex offender. AR 343-48; cf. also, AR 398 (psychiatrist noting that
Mr. Sadlier "stated he was a pathological liar and had numerous runaways
and fights, cruelty to animals, and numerous Breaking and Entry charges and
such behavior starting in his childhood").

1 The ALJ provided several valid, specific, clear, and convincing
2 reasons for rejecting Mr. Sadlier's testimony regarding the severity
3 of his symptoms. As such, the Court holds the ALJ did not reversibly
4 err by finding that Mr. Sadlier's statements concerning the intensity,
5 persistence, and limiting effects of his symptoms were not entirely
6 credible.

7 **2. Application of the Clear-and-Convincing Standard**

8 Raising the issue for the first time in his reply, ECF No. 18,
9 Mr. Sadlier asserts another reason why the ALJ erred in finding him
10 not entirely credible. According to Mr. Sadlier, the Social Security
11 Administration has a policy of supporting claimant-credibility
12 findings with the substantial-evidence standard rather than the clear-
13 and-convincing standard that is required by the Court of Appeals for
14 the Ninth Circuit. Because of this policy, Mr. Sadlier argues, the
15 ALJ must be presumed to have applied the incorrect legal standard. ECF
16 No. 18 at 3. And in support, Mr. Sadlier cites to *Gutierrez v.*
17 *Commissioner of Social Security*, in which a Ninth Circuit panel stated
18 that "a decision supported by substantial evidence will still be set
19 aside if the ALJ did not apply proper legal standards." 740 F.3d 519,
20 523 (9th Cir. 2014).

21 a. Legal Standard

22 Notably, *Gutierrez* did not involve credibility determinations;
23 it does not stand for the proposition that an ALJ must announce that
24 he is applying the clear-and-convincing standard when making an
25 adverse credibility determination. To the contrary, the Ninth Circuit
26 has repeatedly held that an ALJ's adverse credibility determination

1 regarding a claimant's subjective reporting on the severity of his
2 symptoms will be upheld so long as the ALJ's decision includes
3 "specific, clear and convincing reasons" for discrediting the
4 testimony. *See, e.g., Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir.
5 2009), *Smolen*, 80 F.3d at 1284.

6 b. Analysis & Conclusion

7 Even if the ALJ believed he need only provide substantial
8 evidence to support his adverse credibility determinations, as
9 discussed above, the ALJ nonetheless provided specific, clear and
10 convincing reasons as to why he did not find Mr. Sadlier entirely
11 credible. Further, the entirety of the ALJ's decision clearly shows
12 that he would have reached the same conclusion under either the
13 substantial-evidence standard or the clear-and-convincing standard.
14 Thus, even assuming the ALJ meant to apply the incorrect standard,
15 such error was harmless; the Court may not reverse an ALJ's decision
16 on account of an error that is "inconsequential to the [ALJ's]
17 ultimate nondisability determination." *Molina*, 674 F.3d at 1111, 1115.

18 D. Request for Immediate Award

19 In his motion, Mr. Sadlier requests that the Court remand to the
20 Commissioner for an immediate award of benefits. ECF No. 13 at 15-16;
21 *see also Garrison*, 759 F.3d at 1020. Because the Court holds that the
22 ALJ did not reversibly err, however, this request is denied.

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[Mr. Sadlier] believes he should get SSI because he does not want to comply with the rules. The evidence overall establishes that his behavior is volitional and he can control his behavior and comply with rules if he chooses. Given his severe personality disorder, substance use disorders, and to some extent his other psychiatric disorders, he has functional limitations, but not the extent he claims.

Accordingly, **IT IS HEREBY ORDERED:**

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1 **4.** The case shall be **CLOSED**.

2 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
3 Order, enter Judgment for Defendant, and provide copies to all
4 counsel.

5 **DATED** this 27th day of March 2018.

6
7 s/Edward F. Shea
8 EDWARD F. SHEA
9 Senior United States District Judge
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